

COOPERATIVE AGREEMENT
Between THE PIEDMONT ENVIRONMENTAL COUNCIL and
FAUQUIER COUNTY

THIS COOPERATIVE AGREEMENT ("Agreement"), made this ____ day of _____, 20____, by and between **THE PIEDMONT ENVIRONMENTAL COUNCIL**, a private non-profit conservation organization which is a Virginia non-stock corporation, whose address is 45 Horner Street, Warrenton, Virginia 20186 ("PEC"), and **THE BOARD OF SUPERVISORS OF FAUQUIER COUNTY, VIRGINIA**, a body corporate and politic (the "County") (hereinafter collectively referred to as "the Parties").

WHEREAS, the Board of Supervisors of Fauquier County, Virginia, established a Purchase of Development Rights Program on February 19, 2002, to acquire conservation easements for the purpose of protecting agriculture, providing open space and ameliorating the impact of development on the County; and

WHEREAS, Virginia Code Section 10.1-1701 authorizes counties to acquire open space conservation easements for the purpose of retaining or protecting natural or open space values of real property, assuring its availability for agricultural, forestall, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical or architectural aspects of real property; and

WHEREAS, Virginia Code Section 10.1-1703 authorizes counties to acquire conservation easements for the purpose of conserving lands for farming; and

WHEREAS, the purpose of the PDR Program is to preserve open-space land that will (1) protect water quality, air quality, and natural habitat; (2) protect farms, forest and grassland; (3) protect scenic and historic values important to tourism, community identity, and quality of life; and (4) save and protect agricultural property; and

WHEREAS, the Open-Space Land Act ("OSLA"), Code of Virginia Section 10.1-1700 *et seq.*, provides authority for public bodies, including the County, to acquire title or any interests or rights in real property that will provide a means for the preservation or provision of open-space land; and

WHEREAS, The Piedmont Environmental Council is a "qualified conservation organization," as that term is defined in Section 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the "Code") and meets the statutory requirements of Virginia Code §10.1-1009 for a holder of a perpetual easement under the Virginia Conservation Easement Act and has had its principal office in Virginia for more than four (4) years, as required by Virginia Code §10.1-1010.C.; and

WHEREAS, the Virginia Conservation Easement Act, §§10.1-1009, *et seq.* of the Code of Virginia authorizes certain charitable corporations, associations or trusts exempt from taxation pursuant to 26 U.S.C.A. 501 (c)(3) such as The Piedmont Environmental Council, to hold a nonpossessory interest in real property for purposes of retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archeological aspects of real property; and

WHEREAS, Still Waters Farm, L.L.C (Still Waters)., is a Virginia limited liability company, and the owner in fee simple of three separate parcels of real property consisting of: 1) 299.97 acres, more or less, located in Cedar Run Magisterial District, Fauquier County, Virginia, near Calverton, fronting on the east side of State Route 603 (Bastable Mill Road) and Cedar Run, PIN # 7912-94-1508; 2) 63.68 acres, located in Cedar Run Magisterial District, Fauquier County, Virginia, north of Calverton, fronting on the west and east side of State Route 604 (Burwell Road), PIN # 7923-72-2768; and 3) 376.73 acres, more or less, located in Cedar Run Magisterial District, Fauquier County, Virginia, near Calverton, fronting on the west side of State Route 603 (Bastable Mill Road) and Turkey Run, PIN # 7912-67-4221, (hereinafter referred to as the “Still Waters properties”).

WHEREAS, Still Waters (together with its agents, assigns and all other successors to it in interest hereinafter referred to collectively as the “Grantor”) is granting and conveying to PEC, the County (“Grantees”) three (3) conservation and open space easements (the “Still Waters Easements”) in gross over, and the right in perpetuity to restrict the use of, the Still Waters Properties;

WHEREAS, the parties acknowledge that the United States of America holds a contingent right of enforcement in the Still Waters Easements in the event that the parties attempt to terminate, transfer or otherwise divest themselves of any right, title, or interest in the Still Waters Easements, or extinguish the conservation and open space easements without the prior consent of the Secretary of the United States Department of Agriculture and payment of consideration to the United States, then, at the option of such Secretary, all right, title, and interest of the Grantees in this Easement shall become vested in the United States of America;.

WHEREAS, it is the desire and intent of PEC and the County to enter into this Agreement to memorialize the understanding between the County and PEC in the holding and administration of a conservation and/or open space easements created pursuant to the County's PDR Program, the United States Department of Agriculture Farm and Ranchland Protection Program (“FRPP”), for the Still Waters Properties.

NOW, THEREFORE, BE IT AGREED that PEC and the County wish to undertake the co-holding of the three Still Waters Easements according to the following terms:

1. COOPERATIVE AGREEMENT

This Agreement is intended to create a cooperative relationship between the County and the PEC. The parties agree that specific terms of the easement acceptance and funding will be enumerated in each individual case. In the instant case the contribution of the Piedmont Environmental Council is to be \$147,500 and the County contribution is to be \$427,500.

2. GUIDELINES FOR ACCEPTANCE OF THE EASEMENTS TO BE CO-HELD

The Still Waters Easements shall be consistent with the County's PDR Program. In this instance, PEC has assisted Still Waters in the preparation of the easement proposal and application for grant funds by providing information to the property owner and has also prepared or cooperated in the preparation of maps and documentary photographs of the property.

5. RECORD KEEPING AND INFORMATION SHARING

PEC and the County agree that the natural characteristics, ecological features, physical and man-made conditions of the Property at the time of this grant are documented in a Baseline Documentation Report prepared by PEC staff and signed and acknowledged by Grantor and a representative of Grantees, establishing the condition of the Property at the time of this grant and including reports, maps, photographs, and other documentation. Grantees may use the Baseline Documentation Report in enforcing provisions of this easement, but are not limited to the use of the Baseline Documentation Report to show a change of conditions.

The County and PEC each shall be responsible for developing and maintaining a file on each Still Water Easement property. A copy of any correspondence between either PEC or the County and Still Waters pertaining to the easements, or of monitoring photographs and other baseline or monitoring documentation shall be sent to the other grantee for inclusion in their file. Both parties shall make their files available to each other upon request.

PEC and the County shall make information and files pertaining to existing or prospective easements co-held, or to be co-held, available to the U.S. Internal Revenue Service. In the case of easements created and held pursuant to the PDR Program, information and files shall be made available to each other, the U.S. Internal Revenue Service, the State Treasurer, and/or the Office of the Attorney General.

6. MONITORING VISITS

PEC shall have primary responsibility for performing a monitoring visit annually. PEC shall notify the County at least ten (10) days prior to a scheduled monitoring visit to determine if County staff wishes to participate in the monitoring visit.

The County may perform the annual monitoring visit or other monitoring functions in lieu of the PEC performing these activities, should the County determine that PEC is not adequately performing the function.

All information obtained during monitoring visits, telephone calls, or correspondence will be documented in a monitoring report. The party performing the monitoring will provide a copy of the monitoring report to the other co-holding party within 60 days of completing the report.

7. **RESPONSE TO PERMITTED ACTIVITIES REQUIRING CO-HOLDER CONSENT**

Pursuant to the terms of the easements, Still Waters will notify PEC and the County in writing prior to undertaking any activities that require prior consent. In such instances, the following procedures shall apply:

- A. **PEC Notice to the County.** If PEC does not approve of the proposed activity, PEC must notify the County, in writing, within 21 days of receipt of the written notice request from the easement grantor. The County will interpret the lack of any notification from PEC within the allotted time as PEC's approval or acceptance of the proposed activity, unless such activity violates the easement or contradicts state or federal law or tax guidelines.
- B. **Acknowledgement Letter.** The County shall provide to Still Waters within 30 days of receiving the requested written documentation acknowledging receipt of the Grantor's request.
- C. **Determination Letter.** In most instances, the above noted Acknowledgement Letter will indicate PEC's and the County's approval or disapproval of the grantor's request. However, instances may arise where review of the Grantor's request requires more than 30 days. Therefore, unless otherwise permitted by the Grantor, the County and PEC shall have no more than 90 days following the receipt of the grantor's request to provide the Grantor written determination approving or disapproving the request.
- D. **Party Responsible for Communicating Determination to Grantor.** PEC and the County may disagree on a course of action regarding the approval or disapproval of a grantor request. If no resolution to the disagreement can be found prior to the end of the 90 day review period noted in Paragraph 7(C), the disagreement shall be documented in writing and the party recommending disapproval of the proposed activity shall be responsible for communicating its determination to the landowner within the required 90 day period. If both PEC and the County agree on a course of action (approval or disapproval), PEC shall take primary responsibility in communicating any determinations to the landowner.

8. **CO-HOLDER ENFORCEMENT RIGHTS**

Each co-holding party shall have the right to enforce the terms of the Still Waters Easements easement held jointly by the County and PEC. This enforcement right includes, but is not limited to, the right to perform any necessary enforcement, property owner notification, and monitoring functions

9. RESPONSE FOLLOWING DISCOVERY OF EASEMENT VIOLATIONS

If either party discovers an easement violation, which is not corrected immediately, it shall contact the other party by telephone as soon as possible. Within 30 days of discovering the violation, the discovering party shall give the Grantor, with a copy to the other party, a Violation Notification which describes the prohibited use or activities, the specific easement terms violated, and any agreement with the landowner for corrective action. The parties shall review possible remedies for the violation before any remedy is required of the landowner. If the parties agree on an appropriate remedy, PEC shall notify the landowner of the required remedy, monitor its implementation, and take any other action needed to enforce the terms of the easement. The County may assist PEC in performing one or more of these enforcement responsibilities.

If the parties cannot agree within 90 days from the issuance of the Violation Notification on the existence of a violation or on an appropriate remedy, each party shall document the disagreement in writing, and the party seeking to remedy the easement violation shall be responsible for all facets of the enforcement action, including notifying the landowner and the other party of the remedy required for the easement violation.

If either co-holding party, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damages to the conservation values of the protected property, that party may pursue its remedies under the easement without prior consultation with the other co-holding party, provided it notifies the other party by phone or electronic facsimile immediately prior to pursuing its remedies.

10. NOTICES

Notices and other correspondence regarding this Agreement shall be delivered via certified mail, return receipt requested, to the following addresses or to such other addresses as the parties may designate in writing:

The Board of Supervisors of Fauquier County

Attention: Ray Pickering, Program Manager

Purchase of Development Rights Program

35 Culpeper Street

Warrenton, VA 20186

Phone: 540-349-5314

Fax: 540-349-5351

The Piedmont Environmental Council

Who *does pec want to designate? Stewardship coordinator?*

11. MISCELLANEOUS

- A. The Agreement represents the entire understanding between the parties and this Agreement shall not be modified unless in writing and signed by both parties.

- B. The Agreement shall be construed in accordance with the laws of the Commonwealth of Virginia.
- C. The Agreement shall be binding upon and inure to the benefit of the successors in interest to the parties.
- D. Neither party shall have the right to assign this Agreement or any of its rights or responsibilities hereunder

**THE BOARD OF SUPERVISORS OF
FAUQUIER COUNTY, VIRGINIA**
A Body Corporate and Politic

BY: _____

NAME: _____

TITLE: _____

THE PIEDMONT ENVIRONMENTAL COUNCIL

Christopher G. Miller, President